Case 1:07-cv-09662-5-MB-DFE Document 8 DATE SCANNED ゲ

UNITED STATES DISTRICT COURT

WILLIE ALEXANDER,

SOUTHERN DISTRICT OF NEW YORK ----X

Plaintiff,

07 Civ. 9662(RMB)(DFE)

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- against -

MEMORANDUM AND ORDER

Filed 04/22/2008 Page 1 of 2

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A SECTION OF THE PROPERTY OF T

[DOCTOR] GALENO (DOCS), [DOCTOR] PERILLI (DOCS), and L. MARSHALL, Superintendent,

Defendants. \_\_\_\_\_\_

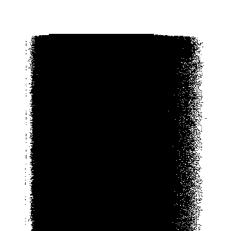
DOUGLAS F. EATON, United States Magistrate Judge.

On April 10, 2008, plaintiff moved for appointed counsel. The Court of Appeals for the Second Circuit has held:

When deciding whether to assign counsel to an indigent civil litigant under 28 U.S.C. § 1915(e)(1), we look first to the "likelihood of merit" of the underlying dispute. Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997); see also Cooper v. A. Sargenti Co., 877 F.2d 170, 174 (2d Cir. 1989) (per curiam). Thus, even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor. See Cooper, 877 F.2d at 172. Only after an initial finding that a claim is likely one of substance, will we consider secondary factors such as the factual and legal complexity of the case, the ability of the litigant to navigate the legal minefield unassisted, and any other reason why in the particular case appointment of counsel would more probably lead to a just resolution of the dispute. Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986).

Carmona v. U.S. Bureau of Prisons, 243 F.3d 629, 632 (2d Cir. 2001). The Second Circuit has repeated this rule, and every judge in the Second Circuit must follow it. See, e.g., Ferelli v. River Manor Health Care Center, 323 F.3d 196 (2d Cir. 2003).

At this juncture, I am unable to say that Mr. Alexander's claim is "likely one of substance." Accordingly, I deny his request for appointed counsel. However, he may renew the request if his case survives a motion for summary judgment.



DOUGLAS F. EATON

United States Magistrate Judge 500 Pearl Street, Room 1360 New York, New York 10007 Telephone: (212) 805-6175

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New York, New York Dated:

April 21, 2008

Copies of this Memorandum and Order are being sent by mail to:

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Hon. Richard M. Berman